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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL - 7 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 02-266
Table of Allotments,) RM-10557
FM Broadcast Stations)
(Chillicothe, Dublin, Hillsboro and)
Marion, Ohio))

To: Office of the Secretary
Attn: Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Citicasters Licenses, L.P., licensee of Station WMRN-FM, Marion, Ohio, and Clear Channel Broadcasting Licenses, Inc., licensee of Station WSRW-FM, Hillsboro, Ohio (collectively, "Clear Channel"), by their counsel, hereby oppose the *Petition for Reconsideration* (the "*Petition*") filed by Committee for Competitive Columbus Radio ("Committee") in the above-captioned proceeding.¹ Committee's *Petition* fails to raise any new factual or legal arguments. Rather, Committee continues to claim that grant of this rule making violates the Commission's multiple ownership rules. However, this claim was addressed and denied by the Bureau in the *Report and Order*.² Thus, the Bureau must dismiss Committee's *Petition*. In support hereof, Clear Channel states as follows:

1. Committee claims that the staff erred in approving the move of Station WMRN-FM from Marion to Dublin, Ohio, because Clear Channel cannot own any more

¹ The Public Notice of the *Petition* was published in the Federal Register on June 22, 2005 (70 Fed. Reg. 36169) and specified that oppositions must be filed by July 7, 2005. Thus, this *Opposition* is timely filed.

² 20 FCC Red 6305 (2005).

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stations in the Columbus, Ohio market. Committee is procedurally barred from raising this argument. As the Bureau correctly concluded in the *Report and Order*, “Committee’s concentration of control and multiple ownership issues are prematurely raised. It is established policy not to consider such issues in conjunction with an allotment rule making proceeding.”³ The Bureau’s decision was supported by case law,⁴ and Committee fails to cite any legal or factual error in the Bureau’s decision. Thus, Committee’s claim regarding competitive and ownership concerns must be dismissed.⁵

2. Committee also alleges that the Clear Channel proposal does not create a preferential arrangement of allotments. However, Committee cites no evidence or case law to support this claim. Rather, Committee merely recites the Commission’s FM allotment priorities and makes the unsupported claim that grant of this proposal violates these priorities. In fact, the Bureau in its *Report and Order* exhaustively evaluated Clear Channel’s proposal and concluded that it did result in a preferential arrangement of allotments.⁶ Committee evidently believes that its arguments regarding “undue concentration” and “ownership violations” (neither of which has actually occurred) should be taken into account in assessing the public interest benefits of Clear Channel’s proposal under priority (4). But, again, as extensively briefed by Clear Channel throughout this proceeding, and as conclusively stated by the Bureau in its *Report and*

³ *Id* at ¶ 16.

⁴ See *FM Channel Assignments: Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988); see e.g., *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 17 FCC Rcd 25055 (MB 2002); *Chillicothe and Ashville, Ohio*, 17 FCC Rcd 20418 (MB 2002), *app. for review pending*; *Lewiston, Montana*, 15 FCC Rcd 24097 (MMB 2000).

⁵ Committee’s claim regarding Section 73.3518 of the Commission’s Rules must also be dismissed because Clear Channel has yet to file an application for Station WMRN-FM to implement the Commission’s allotment decision in this proceeding. And, any application that Clear Channel does file will comply with the Commission’s Rules.

⁶ 20 FCC Rcd at ¶ 7-12.

Order, ownership and concentration issues are not cognizable in allotment proceedings. Further, even if the Commission considered concentration and ownership issues under priority (4), which it does not, Clear Channel's proposal is still preferred because it advances priority (3).⁷

3. Finally, Committee, tacitly recognizing that ownership issues are germane only at the application stage, stresses that Clear Channel has not made a divesture commitment. This is irrelevant because there is no requirement that Clear Channel make a divesture commitment before it files an application implementing this rule making. Further, Clear Channel is aware that, when it files an application to implement the modification to Station WMRN-FM specified in the *Report and Order*, it must comply with the Commission's multiple ownership rules.


In conclusion, for the reasons stated above, the Bureau should dismiss Committee's *Petition* because it fails to raise any new factual or legal arguments that warrant reversal of the Bureau's decision in this proceeding.

Respectfully submitted,

CITICASTERS LICENSES, L.P.

CLEAR CHANNEL BROADCASTING
LICENSES, INC.

By:


Mark N. Lipp
Scott Woodworth
Vinson & Elkins L.L.P.
1455 Pennsylvania Ave, NW, Suite 600
Washington, DC 20004-1008
(202) 639-6500

Its Counsel

July 7, 2005

⁷ *Id* at ¶ 11; see *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

CERTIFICATE OF SERVICE


I, Giselle Abreu, in the law firm of Vinson & Elkins, do hereby certify that I have on this 7th day of July, 2005, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Opposition**" to the following:

*R. Barthen Gorman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Lauren A. Colby
Law Office of Lauren A. Colby
10 East 4th Street
P.O. Box 113
Frederick, MD 21701
(*Counsel to The Committee for Competitive Columbus Radio*)

Jerrold D. Miller
Miller and Neely, PC
6900 Wisconsin Avenue
Suite 704
Bethesda, MD 20815
(*Counsel to Sandyworld, Inc.*)

Dennis Corbett
Leventhal Senter & Lerman PLLC
2000 K Street, NW
Suite 600
Washington DC 20006
(*Counsel to Infinity Broadcasting Operations, Inc.*)



Giselle Abreu

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